

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**HB 2372 – SB 2234**

April 10, 2012

**SUMMARY OF AMENDMENT (016376):** Deletes all language after the enacting clause. Expands the meaning of “intangible expense” for the purpose of franchise and excise tax law to mean interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange, or disposition of intangible property. Further expands the meaning of “intangible expense” for the purpose of deducting certain intangible expenses from net taxable earnings or net losses, for certain affiliates doing business in, or deriving income from, states that impose an income tax, except for certain states that have authorized combined or consolidated income tax reporting. Adds language that specifies instances of exclusion from franchise tax, in the Commissioner of Revenue’s discretion, and upon written request, for certain persons of affiliated groups or financial institution affiliated groups. Changes the meaning of “net earnings” and “net losses” for the purpose of franchise and excise tax law to account for the expanded definition of “intangible expense”, which effectively authorizes certain intangible expenses to be subtracted from the net earnings or net losses of certain taxpayers, if specifically approved by the Commissioner of Revenue. Requires the Commissioner to assess penalties equal to the greater of \$10,000 or 50 percent of any adjustment to the initially filed returns, when any taxpayer has negligently failed to comply with the requirements established by this bill as amended. Authorizes the Commissioner of Revenue to extend filing deadlines when due dates fall on a legal holiday, or when the Internal Revenue Service has extended filing deadlines for certain groups of taxpayers such as taxpayers affected by federally declared disaster. Includes material handling equipment owned by any taxpayer, rather than material handling equipment owned by franchise and excise taxpayers, in the definition of industrial machinery.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Revenue - \$12,500,000

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions applied to amendment:

- According to the Department of Revenue (DOR), the provisions of this bill as amended would, in certain circumstances, require the Commissioner of Revenue to approve an application before a taxpayer would be eligible to deduct intangible expenses from taxable income.
- As a result of certain taxpayers being required to file an application with DOR in order to receive approval for a qualified deduction of intangible expense, taxable income of multiple taxpayers, as it applies to franchise and excise tax will increase. Therefore, franchise and excise tax collections should increase as a result of this bill as amended.
- According to DOR, and based upon a query of the Department of Revenue data-warehouse, the Department indicates a recurring increase in state revenue exceeding \$12,500,000. The Fiscal Review Committee staff does not have access to the data and information upon which this calculation is based and cannot independently verify its accuracy.
- Based on the potential size of penalty for non-compliance, it is anticipated that taxpayers would embrace compliance at a level that any increase in state revenue from penalties would be not significant.
- According to DOR, the fiscal impact estimated for the original bill remains applicable for the bill as amended by amendment 016376.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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